IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10186 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESHCHANDRA SHIVNATH JAISWAL

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 10186 of 2001

HL PATEL ADVOCATES for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 26th August, 2001 passed by the District Magistrate, Ahmedabad in exercise of power under Section

3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered three registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of three anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. The learned Advocate Mr. Patel appearing for the petitioner submitted that the order of detention reflects gross non-application of mind on the part of the detaining authority and it has resulted into infringement of the right of the detenu of making an effective representation and therefore, the continued detention of the detenu would be vitiated. He has drawn attention of this Court to the grounds of detention, wherein the detaining authority observed that out of the statements of three anonymous witnesses, statements of two anonymous witnesses were verified by the Additional District Magistrate, Ahmedabad, whereas the third could not be verified. Mr. Patel contended that inspite this, the detaining authority has exercised powers under Section 9(2) of the PASA Act in respect of all three witnesses and non-disclosure of the identity of the third witness whose statements were not verified, has affected the right of the detenu envisaged under Art. 22(5) of the Constitution of India. It is contended that the entire decision making process by the detaining authority while passing the order of detention would indicate non-application of mind, which would vitiate the detention itself and not that statement as a ground only. In support of his contention, he has relied on the decision of this Court in the case of S.V. Sindhi Vs. Commissioner of Police, Baroda City, reported in 2000 (1) GLH 443.

4. Learned Assistant Government Pleader Mr. D.P. Joshi has opposed to this petition.

5. Having regard to the contentions raised before this Court, it is amply clear on plain reading of the grounds of detention that the detaining authority has observed that out of the three witnesses, statements of two witnesses were verified by the Additional District Magistrate, Ahmedabad. The statement of third witness

could not be verified, as he did not remain present. However, there is no dispute about the fact that powers under Section 9(2) of the PASA Act has been exercised in respect of all the three witnesses, without disclosing the identity of the third witness to the petitioner. This would reflect that the authority has exercised power without any application of mind. The resultant effect would be that the decision making process would be vitiated and the satisfaction recorded by the detaining authority on such process and material would stand vitiated. Similar question arose before a Division Bench of this Court in S.V. Sindhi Vs. Commissioner of Police, Baroda City (supra) and it was held that even after considering provision of Section 6 of the PASA Act, such detention order cannot be said to be legal and valid as it vitiates the subjective satisfaction. The said decision would squarely be applicable to the facts of the present case. The order of detention therefore cannot be permitted to stand. Petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 26th August, 2001 passed by the District Magistrate, Ahmedabad is quashed and set aside. Detenu Sureshchandra Shivnath Jaiswal be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas